

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

B. F. AND LILLIE CARRISS	)	
	)	
COMPLAINANTS	)	
	)	
V.	)	CASE NO. 95-104
	)	
SHELBY RURAL ELECTRIC COOPERATIVE	)	
CORPORATION	)	
	)	
DEFENDANT	)	

O R D E R

On March 15, 1995, B. F. and Lillie Carriass ("Complainants") filed a complaint against Shelby Rural Electric Cooperative Corporation ("Shelby RECC") alleging to have been billed for an amount in excess of the electricity they had used due to the fact that lightning had struck the pole to which the meter was attached causing the meter to "jump." By Order of March 28, 1995, the Commission directed Shelby RECC to either satisfy the matter presented in the complaint or file a written answer within 10 days of the date of the Order. Shelby RECC responded to the complaint on April 7, 1995, stating that the Complainants had been properly billed for their electric usage. Shelby RECC responded to an April 25, 1995 information request from the Commission on May 5, 1995. As issues of fact remained in dispute, on June 23, 1995, the Commission scheduled a formal hearing in the matter.

A hearing was held on August 15, 1995. The Complainants appeared, pro se. The Complainants testified on their behalf, as did Janice Delk and Mary Ann Burgin, their daughters. Shelby RECC appeared, represented by counsel. Employees John Parker, Marketing Representative (now Energy Advisor); David Graham, Engineering Technician; Mary Catlett, Manager of Office Services; and Dudley Bottom, Jr., President and General Manager, testified on behalf of Shelby RECC.

#### FINDINGS OF FACT

Shelby RECC is a rural electric cooperative that owns, controls, and operates facilities used in the distribution of electricity to the public for compensation. Its principal offices are at 620 Old Finchville Road, Shelbyville, Kentucky. The Complainants reside at 1527 King's Highway, Waddy, Kentucky, and are customers of Shelby RECC.

In April 1994 the Complainants received a bill from Shelby RECC for \$1,464.11 for electric service through March 15, 1994. According to the Complainants, they do not owe this amount due to an incident which occurred in March 1994. At the hearing, the Complainants offered testimony that one night that month during a severe electrical storm lightning struck the pole on which the Complainants' meter is located. The Complainants testified that the pole looked "just like it was on fire." (Transcript of hearing August 15, 1995, pp. 19-20). The storm caused damage to the Complainants' electrical fixtures, outlets, and equipment in their house, barn, and tenant house.

It is the opinion of the Complainants that the lightning caused their meter to "jump," by which they mean the dials spun to a different setting, resulting in the contested billing. The meter had a four dial clock-type register. The meter also had a register multiplier of 20.

Shelby RECC investigated the matter at the request of the Complainants on April 21, 1994. Shelby RECC testified that its employees inspected the meter pole and external wiring but found nothing of significance. The Complainants meter was removed for testing at their request on May 2, 1994. The meter was tested by Shelby RECC and found to be 100 percent accurate. The meter was tested by Commission Staff on May 4, 1995, in response to the formal complaint. These "Complaint Tests" were done in accordance with the directives outlined in the Commission's Regulations 807 KAR 5:006, Section 18(2) and 807 KAR 5:041, Section 17. Also present for the tests were representatives of Shelby RECC. The Complainants chose not to attend.

Commission Staff determined the overall average accuracy of the meter to be 99.93 percent, well within the Commission's accuracy guidelines of  $\pm 2$  percent as required by KRS 278.210. This finding confirmed Shelby RECC's earlier test results. Additional checks of the meter by Commission Staff found there to be no defects of any kind. The meter showed no evidence of damage from lightning or any other source.

The meter's associated current transformer then became the subject of investigation by Commission Staff. Tests were conducted

at the Complainants' farm on May 11, 1995. An overall average ratio error of -1.42 percent was found for the current transformer, resulting in an overall meter installation accuracy of 99.25 percent, still within the Commission's guidelines. The Commission Staff found no defect in or damage to the meter installation. The pole was properly grounded and undamaged as well.

#### CONCLUSIONS OF LAW

Shelby RECC is a utility subject to the regulation of this Commission. KRS 278.160(2) states that:

No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

Also, KRS 278.170(1) requires that no utility give an unreasonable preference to any person.

From the facts of this case, it does not appear that Shelby RECC is demanding greater compensation than it deserves for service rendered. The meter in question has been thoroughly tested and examined by both Shelby RECC and Commission Staff. It met the Commission's minimum accuracy requirements and no defects were discovered. There is no evidence that lightning caused the meter to "jump" as alleged. The meter shows no sign of damage; the pole shows no sign of damage. There is evidence that the transformer bushing had been struck by lightning, causing the transformer's lightning arrester to arc properly to the ground, but this is a

common finding. It is therefore highly unlikely that the meter functioned incorrectly at any time.

The high bill is most likely the result of the accumulation of erroneous meter readings over a three-year period. While Shelby RECC made annual readings, the monthly readings were the responsibility of the customer prior to May 1994, at which time Shelby RECC began to read all of its customers' meters on a monthly basis. Shelby RECC negligently failed to detect the amount underbilled until the Complainants questioned the reading after the electrical storm. By that time, the unbilled usage had accumulated to the large amount now in dispute.

A similar situation was addressed in Boone County Sand and Gravel Company, Inc. v. Owen County Rural Electric Cooperative Corporation, Ky.App., 779 S.W.2d 224. The appellants in that case, customers of Owen County RECC, attempted to defeat the electric company's efforts to recover an amount that was negligently underbilled by pleading the defense of estoppel. Citing KRS 278.160(2), supra, and Memphis Light, Gas & Water Division v. Auburndale School System, 705 S.W.2d 652 (Tenn. 1986), the Court of Appeals "failed to perceive any valid basis for finding that the equitable defense of estoppel may be invoked by a customer in Kentucky to defeat the claim of a utility to recover the amount of an underbilling." Boone County Sand and Gravel at 226. While Shelby RECC may have been negligent in its handling of the Complainants' billing, the defense of estoppel is not available.

Unless the Complainants pay the amount in dispute, they will have received service from Shelby RECC for less compensation than prescribed in its schedules contrary to KRS 278.160(2). If Shelby RECC does not require the Complainants to pay in full for the service they received, the utility would violate KRS 278.170(1).

According to 807 KAR 5:006, Section 10(2), if a customer has been incorrectly billed, "the utility shall immediately determine the period during which the error existed, and shall recompute and adjust the customer's bill to either provide a refund to the customer or collect an additional amount of revenue from the underbilled customer." The utility is required to readjust the account based upon the period during which the error is known to have existed. Customers who were underbilled cannot be required to repay over a shorter period of time than the period during which the underbilling took place.

IT IS THEREFORE ORDERED that:

1. The complaint of B. F. and Lillie Carriss against Shelby RECC be and hereby is dismissed.

2. Within 20 days of the date of this Order, Shelby RECC shall establish and file with the Commission a payment plan in accordance with the Commission's regulations and its published

tariff which will allow the Complainants to pay the account in accordance with 807 KAR 5:006, Section 10(2).

Done at Frankfort, Kentucky, this 6th day of October, 1995.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director